IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
April 6, 2005 Session

JANET BLAIR WILLSON v. PAUL R. WOHLFORD

Appeal from the Circuit Court for Sullivan County
No. C11648(M) G. Richard Johnson, Chancellor by Designation

No. E2004-02020-COA-R3-CV - FILED MAY 19, 2005

The dispositive issue in this legal malpractice case is whether the trial court erred in granting the Defendant summary judgment on the grounds that the applicable statute of limitations, Tenn. Code Ann. § 28-3-104(a)(2), had run and therefore the complaint was time-barred. We hold that the Plaintiff suffered a legally cognizable injury and that she knew or should have known that her injury was caused by the Defendant's alleged negligence more than one year prior to her filing of the complaint in this action. We therefore affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Jerrold L. Becker, Knoxville, Tennessee, for the Appellant, Janet Blair Willson.

Thomas L. Kilday, Greeneville, Tennessee, for the Appellee, Paul R. Wohlford.

OPINION

On August 31, 1998, Janet Blair Willson, acting by and through her former counsel, filed a complaint for divorce against her husband, Rodney Wayne Williams, Sr. ("Husband"). In April of 1999, Ms. Willson, having discharged her first attorney, hired the Defendant, Paul R. Wohlford, to represent her in the divorce case. Over the course of the following two years, Ms. Willson and Husband engaged in the process of pretrial discovery and negotiating an agreement for the division of the marital assets.

After the parties had reached an agreement, on March 5, 2001, a hearing was held before Chancellor Richard Ladd, at which Ms. Willson and Husband announced to the court that they had reached an agreement, but that it had not yet been reduced to writing. Ms. Willson testified to the general terms of the agreement and advised the trial court that she agreed to those terms and

considered them to be fair. The court granted Ms. Willson a divorce on the stipulated grounds of inappropriate marital conduct, and approved the agreement as orally presented.

On March 23, 2001, Ms. Willson received a draft of the marital dissolution agreement ("MDA") that had been prepared by Husband's attorney. According to her complaint, Ms. Willson did not approve of all the terms of the MDA, and she sent Mr. Wohlford a letter by fax that expressed her concern and disapproval. Mr. Wohlford responded to this letter with his own letter stating that "I have received your [Ms. Willson's] latest fax and it is apparent to me that I cannot continue as your attorney." The letter further stated that "I cannot ethically represent to [Husband's counsel] and Judge Ladd that we have settled the matter and turn around and say that we have not." Enclosed with Mr. Wohlford's letter was a copy of a motion to withdraw as counsel. Ms. Willson testified that she was in a state of "sheer panic" upon receiving Mr. Wohlford's letter. She responded the same day with a letter to Mr. Wohlford stating that she would sign the MDA. Ms. Willson then signed the MDA on March 29, 2001. The trial court entered its final order of divorce, which adopted and incorporated the MDA, on April 6, 2001.

On April 5, 2002, Ms. Willson filed her complaint in this action against Mr. Wohlford. She alleged Mr. Wohlford committed legal malpractice by failing to adequately represent her in the divorce litigation, failing to undertake due diligence in pursuing her claim, and "failing to render competent legal advice as to protect her interests once [he] knew or should have known of [Husband's] dissipation of the marital estate."

Mr. Wohlford answered and, on April 27, 2004, filed a motion for summary judgment alleging, among other things, that Ms. Willson's action was barred by the one-year statute of limitations for legal malpractice actions. The trial court heard the motion on June 2, 2004. On June 6, 2004, the trial court entered an order granting Mr. Wohlford summary judgment, holding that Ms. Willson's cause of action accrued, at the latest, on March 29, 2001, the date she had signed the MDA. The trial court also held that Ms. Willson was judicially estopped from denying or repudiating sworn statements made by her in the MDA and at the March 5, 2001 hearing where the orally-presented terms of the agreement were presented to and approved by the trial court.

Ms. Willson appeals, presenting the following issues for our review:

1. Whether the trial court erred in holding her action time-barred under Tenn. Code Ann. § 28-3-104(a)(2) because it accrued more than one year prior to the filing of her complaint.

2. Whether the trial court erred in holding she was judicially estopped from denying or repudiating her prior sworn statements in the MDA and the announcement of the agreement made at the hearing.

Our standard of review regarding summary judgment is well settled. A motion for summary judgment should be granted when the movant demonstrates that there are no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law. Tenn.R.Civ.P.

56.04. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. *Bain v. Wells,* 936 S.W.2d 618, 622 (Tenn. 1997). On a motion for summary judgment, the court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. *Byrd v. Hall,* 847 S.W.2d 208 (Tenn. 1993).

This court has previously noted that "[d]efenses based on a statute of limitations are particularly amenable to summary judgment motions." *Cherry v. Williams*, 36 S.W.3d 78, 83 (Tenn. Ct. App. 2000) and cases cited therein. When the material facts and the inferences reasonably drawn therefrom are not disputed, the court itself can apply the pertinent legal principles to determine whether a moving party is entitled to judgment as a matter of law. *Id.*

The Supreme Court, in the case of *John Kohl & Co. v. Dearborn & Ewing,* 977 S.W.2d 528 (Tenn. 1998), set forth the legal principles applicable to a determination of when a legal malpractice case in Tennessee accrues as follows:

> In legal malpractice cases, the discovery rule is composed of two distinct elements: (1) the plaintiff must suffer legally cognizable damage--an actual injury--as a result of the defendant's wrongful or negligent conduct, and (2) the plaintiff must have known or in the exercise of reasonable diligence should have known that this injury was caused by the defendant's wrongful or negligent conduct. *Carvell v. Bottoms,* 900 S.W.2d 23, 28-30 (Tenn.1995). An actual injury occurs when there is the loss of a legal right, remedy or interest, or the imposition of a liability. *See LaMure v. Peters,* 122 N.M. 367, 924 P.2d 1379, 1382 (1996). An actual injury may also take the form of the plaintiff being forced to take some action or otherwise suffer "some actual inconvenience," such as incurring an expense, as a result of the defendant's negligent or wrongful act. *See State v. McClellan,* 113 Tenn. 616, 85 S.W. 267, 270 (1905).

John Kohl & Co. v. Dearborn & Ewing, 977 S.W.2d 528, 532 (Tenn.1998).

To support her claim of legal malpractice, Ms. Willson alleges that early in Mr. Wohlford's representation of her in the underlying divorce matter, she informed Mr. Wohlford of her concerns that Husband was dissipating assets of the marital estate. She requested Mr. Wohlford to obtain injunctive relief restraining Husband from dissipating the assets, but he did not do so. From early on in the divorce case, Ms. Willson was concerned that she did not know the value of certain marital assets, particularly accounts related to Husband's employment, such as his retirement account. Ms. Willson alleges that Mr. Wohlford failed to conduct adequate discovery to determine the amount of assets in the marital estate, and the amount dissipated by Husband subsequent to her separation from Husband. She asserts that Mr. Wohlford did not act on her request to seek reimbursement for funds

allegedly spent by Husband on maintenance and support of his girlfriend during the pendency of the divorce action. Finally, Ms. Willson alleges that Mr. Wohlford used strong-arm or coercive tactics to force her to sign the MDA, notwithstanding her objections that she did not have enough information, by threatening to withdraw from representation if she did not.

The applicable statute of limitations in this case, Tenn. Code Ann. § 28-3-104(a)(2), begins to run when the plaintiff's action accrues, which in a legal malpractice case is such time as both elements of the discovery rule are met: (1) an actual injury as a result of the defendant's wrongful or negligent conduct and (2) plaintiff's discovery of the injury caused by defendant's wrongful or negligent conduct. *John Kohl & Co.*, 977 S.W.2d at 532; *Shadrick v. Coker*, 963 S.W.2d 726, 733 (Tenn. 1998). The trial court, applying the discovery rule, held that Ms. Willson's action accrued "at the latest" on March 29, 2001, the date on which she signed the MDA. Ms. Willson argues that this was error, and that the court should have held that her action accrued on April 6, 2001, the date the trial court entered its final order of divorce. Under this theory, Ms. Willson's malpractice action, filed April 5, 2002, would have been timely.

We hold that the Plaintiff's cause of action accrued no later than March 29, 2001 when she signed the MDA. We cannot agree with Ms. Willson's argument because the undisputed facts show that she was clearly aware of Mr. Wohlford's alleged failures to procure the requested discovery and she did not have complete information regarding the value of the marital estate when she testified to the terms of the settlement agreement and affirmed her approval of same to the trial court on March 5, 2001 and when she signed the MDA on March 29, 2001. We agree with the trial court that the elements of the discovery rule were met no later than March 29, 2001.

In this case, the parties' statements of undisputed facts filed pursuant to Tenn. R. Civ. P. 56.03, always useful in summary judgment cases, are particularly helpful. The following is a recitation of pertinent undisputed facts as alleged by Defendant's Rule 56.03 statement, all of which were agreed to without qualification by Plaintiff in her filed response:

> [T]he following additional events occurred more than one year prior to Ms. Willson filing her malpractice action:
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> * * *
>
> Ms. Willson wrote a letter to Mr. Wohlford stating that she felt that her husband had been withdrawing money from the Eastman accounts and using them for various expenses, that they needed an accounting of this money and that they did not know what Husband's settlement was with Eastman upon termination of his employment.
>
> * * *

On September 7, 1999 Ms. Willson sent another letter to Mr. Wohlford saying that "I don't see where my interests have been protected and I have mentioned all of these things again and again," thereby addressing the fact that she did not agree with what Mr. Wohlford had done regarding his investigation and discovery relative to husband's assets, etc.

* * *

Prior to obtaining the divorce and signing the MDA, and in addition to independently consulting accountant Paul Rhoten regarding the marital property issue, Ms. Willson furthermore independently consulted Gilbert & Carrier, a financial planning firm. . .Upon consulting the financial planner she received their letter/report on August 25, 2000. She learned at that time that there had been more withdrawals by her husband from the Eastman accounts (Cuna and Fidelity) than had been disclosed to her and that even from this additional information "we still didn't feel that it was adequate information."

Ms. Willson independently consulted a separate attorney, James Holmes, who had experience regarding Eastman-related accounts, met with him on April 18, 2000, and received a letter from him dated April 20, 2000 in which she was strongly recommended to subpoena account information before a settlement was reached and advised that the information she had been provided was only "a fraction of the total benefits which he [husband] is entitled to upon his termination.". . .None of the documents or information recommended to her by Holmes was obtained prior to her signing the MDA and obtaining her divorce.

* * *

On January 11, 2001 Ms. Willson sent Mr. Wohlford a letter advising that, with respect to divorce settlement matters, there were "a lot of unknowns out there," but which "unknowns" had not been answered prior to the time she signed the MDA and obtained the divorce.

* * *

On March 28, 2001 [the day before Ms. Willson signed the MDA] Ms. Willson sent a letter to Mr. Wohlford declining to go to the office of her husband's attorney (David Blankenship) to sign the agreed Marital Dissolution Agreement, in which letter she, *inter alia*, raises questions about the accuracy and equity of the agreement, corroborating information and documents never obtained, etc. This was sent because of her concerns and apprehensions that her husband

> had made withdrawals from accounts, had assets that he had not been forthright about, etc. . .[The letter is erroneously dated "2-28-01" instead of 3-28-01.]
>
> [Brackets and parentheses in original].
>
> * * *
>
> At the time she signed the MDA on March 29, 2001 Ms. Willson did not think that they had enough information and did not think that it was a fair settlement.
>
> **PLAINTIFF'S RESPONSE**: Agreed. Ms. Willson did not feel she had any other choice in light of Mr. Wohlford's conduct.
>
> At the time she signed the MDA on March 29, 2001 Ms. Willson was still waiting for the previously-requested material. She felt that her husband was cheating her with respect to the Eastman accounts, that he had made withdrawals from the Eastman accounts that had not been accounted for, and that the documents that she had requested–but had never obtained–would verify this.
>
> **PLAINTIFF'S RESPONSE**: Agreed. Ms. Willson signed the MDA because (1) her attorney advised her to sign it, as the "judge would hold her to it". . .and (2) she was in a complete panic about having to start over with a new attorney in light of Mr. Wohlford's threat to withdraw.

[Citations to record in original omitted].

Thus, from these undisputed facts, it is not seriously open to question that Ms. Willson knew or in the exercise of reasonable diligence should have known that she suffered an injury resulting from Mr. Wohlford's alleged negligence no later than March 29, 2001.

Ms. Willson argues, however, that she did not suffer an "actual" or "legally cognizable" injury until the trial court entered its final judgment in the underlying divorce case on April 5, 2001. In support of this argument, she cites *Chambers v. Dillow*, 713 S.W.2d 896 (Tenn. 1986), *Tanaka v. Meares*, 980 S.W.2d 210 (Tenn. Ct. App. 1998) and *Cherry v. Williams*, 36 S.W.3d 78 (Tenn. Ct. App. 2000) – all cases in which the court found the date of accrual of the plaintiff's malpractice action to be the date of entry of final judgment in the underlying case.

In particular, Ms. Willson cites the following language found in *Cherry v. Williams:*

> In litigation, the most easily identifiable time when rights, interests, and liabilities become fixed is when a court enters judgment. A judgment, after all, is "an adjudication of the rights of the parties in respect to the claim[s] involved." *Ward v. Kenner*, 37 S.W. 707, 709

> (Tenn.Ch.App.1896) (defining judgment). Accordingly, most courts have made the entry of an adverse judgment the starter pistol for the running of the statute of limitations on litigation malpractice.
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> * * *
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> It is a court's judgment that decrees the loss of a right or remedy or imposes a legal liability. Thus, when a judgment is entered, a "legally cognizable injury" occurs.

Cherry v. Williams, 36 S.W.3d at 84-85.

While at first blush this language appears to support Ms. Willson's position, a close examination reveals that neither *Cherry*, nor any other case cited by Ms. Willson or revealed by our research, stands for the blanket proposition that under no circumstances will a plaintiff's malpractice action be held to have accrued before entry of final judgment in the underlying case. *Cherry* simply notes that "the *most easily identifiable time* when rights, interests and liabilities become fixed" is the entry of judgment. *Id.* at 84 (emphasis added). Nothing in *Cherry* precludes the possibility that a legally cognizable injury may occur prior to final judgment. The Supreme Court has held that "it [is] unnecessary for the plaintiffs to have suffered all the injurious effects or consequences of the defendants' negligence in order for the statute to begin running." *John Kohl & Co.*, 977 S.W.2d at 533.

In determining whether Ms. Willson suffered a legally cognizable injury at the time she signed the MDA, a review of the contractual nature of marital dissolution agreements is of assistance. It is well-settled that "[a] property settlement agreement between a husband and wife is within the category of contracts and is to be looked upon and enforced as an agreement, and is to be construed as other contracts as respects its interpretation, its meaning and effect." *Gray v. Estate of Gray*, 993 S.W.2d 59, 63 (Tenn. Ct. App. 1998)(internal quotation marks omitted); *Blackburn v. Blackburn*, 526 S.W.2d 463, 465 (Tenn. 1975). As the *Blackburn* Court stated,

> An agreement between a husband and wife on matters outside the scope of the legal duty of child support during minority, or alimony in futuro over which the court also has continuing statutory power to modify, retains its contractual nature, although included in the decree of the court, and is enforceable in the same manner as other contracts.

Id. at 465.

In addition, prior to signing the MDA, Ms. Willson presented the general terms of the agreement to the trial court on March 5, 2001 and testified at that hearing as follows:

> MR. WOHLFORD: Now, late Saturday afternoon we worked out an agreement that's going to be reduced to writing with regard to the settlement of your divorce. Is that right?
> MS. WILLSON: That's correct.
> * * *
> MR. WOHLFORD [after Ms. Willson's testimony regarding MDA terms]: And you ask the Judge to approve that?
> MS. WILLSON: Okay.
> Q: As a fair agreement and something that you're satisfied with?
> A: I guess, yes.
> Q: Well, you need to say that you are or you aren't. Either we have the settlement or we don't.
> A: Yes. I agree.

At the close of the hearing, the trial court approved the agreement and granted Ms. Willson a divorce. Ms. Willson and Husband then executed the MDA on March 29, 2001.

Under these circumstances, we are of the opinion that it is clear that Ms. Willson suffered a legally cognizable injury no later than March 29, 2001. She incurred, at the least, potential liability for a breach of contract claim brought by Husband. *Cf. Harbour v. Brown,* 732 S.W.2d 598, 600 (Tenn. 1987); *Harbour v. Brown* (opinion after remand), 1989 WL 22712, 1989 Tenn. App. LEXIS 204 (Tenn. Ct. App. E.S., filed Mar.17, 1989). She also faced the serious possibility of the trial court enforcing the MDA, which she had signed with full knowledge that she did not have all of the information concerning the assets of the marital estate. In the case of *Persada v. Persada,* No. E2002-00397-COA-R3-CV, 2002 WL 31640564, 2002 Tenn.App. LEXIS 952 (Tenn. Ct. App. E.S., filed Nov. 22, 2002) this court affirmed the trial court's enforcement of the parties' settlement agreement where the husband attempted to repudiate the agreement shortly after he signed it. The *Persada* court stated the following:

> Other cases which have followed *Harbour* [*v. Brown,* 732 S.W.2d 598 (Tenn. 1987)] have relied upon its bright line rule that consent may be withdrawn *unless and until* the terms are announced to the court and approved by it. *See Environmental Abatement, Inc. v. Astrum R.E. Corp.,* 27 S.W.3d 530 (Tenn.Ct.App.2000); *Joiner v. Metropolitan Government,* 2000 WL 1425232 (Tenn.Ct.App. Sept. 28, 2000); *Denbow v. Denbow,* 1996 WL 243894 (Tenn.Ct.App. May 9, 1996).
>
> It is equally clear, however, that if the terms of the settlement had been announced to the court and approved before consent was withdrawn, then the Judgment entered thereon is valid. *See REM Enterprises, Ltd. v. Frye,* 937 S.W.2d 920 (Tenn.Ct.App.1996); *Moxham v. Crafton,* 2001 WL 468669 (Tenn.Ct.App. May 4, 2001);

Callison v. Callison, 1988 WL 100050 (Tenn.Ct.App. Sept. 29, 1988).

Persada, 2002 WL 31640564 at *2 (Emphasis added). *Accord Myers v. Myers*, No. E2004-01362-COA-R3-CV, 2005 WL 936925, 2005 Tenn.App. LEXIS 236 (Tenn. Ct. App. E.S., filed Apr. 22, 2005)(enforcing signed mediated settlement agreement over wife's objection); *Lew v. Lew*, No. E2002-01811-COA-R3-CV, 2003 WL 2170979, 2003 Tenn. App. LEXIS 543 (Tenn. Ct. App. E.S., filed July 31, 2003); *Callison v. Callison*, 1988 WL 100050, 1988 Tenn. App. LEXIS 587 (Tenn. Ct. App. E.S., filed Sept. 29, 1988); *cf. Ledbetter v. Ledbetter*, No. E2004-00239-SC-S09-CV, — S.W.3d —, 2005 WL 775386 (Tenn. filed April 7, 2005).

Taking the strongest legitimate view of the evidence in favor of Ms. Willson and allowing all reasonable inferences in her favor, we hold, for the aforementioned reasons and under the above-cited authorities, that she suffered a legally cognizable injury no later than March 29, 2001. We further hold that according to her own testimony Ms. Willson knew that Mr. Wohlford had failed to procure the requested discovery regarding marital assets, and knew of the other alleged acts of malpractice, at the time she executed the MDA. She therefore knew, or in the exercise of reasonable diligence should have known, that the alleged acts of malpractice caused her to suffer injury, no later than March 29, 2001.

It follows that the judgment of the trial court dismissing Ms. Willson's complaint for failure to timely file it under Tenn. Code Ann.§ 28-3-104(a)(2) is affirmed. Our holding on this issue renders it unnecessary to reach the issue of whether the trial court erred in applying the judicial estoppel doctrine, and this issue is pretermitted. Costs on appeal are assessed to the Appellant, Janet Blair Willson.

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SHARON G. LEE, JUDGE